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MAILED

AUG 31 2009

OFFICE OF PETITIONS

In re Patent No. 7,507,724	:	
Nai-Kong V. Cheung	:	
Issued: March 24, 2009	:	DECISION ON REQUEST FOR
Application No. 10/621,027	:	RECONSIDERATION OF
Filed: July 16, 2003	:	PATENT TERM ADJUSTMENT
Atty Docket No.	:	
#639-B-PCT-US	:	

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed on March 10, 2009. Patentee requests that the previous decision on application for patent term adjustment be reconsidered, and that the patent term adjustment indicated on the face of the patent be corrected from 0 days to 104 days.

The request for reconsideration of patent term adjustment is **DISMISSED** with respect to making any change in the patent term adjustment determination under 35 U.S.C. § 154(b) of 0 days.

BACKGROUND

On March 10, 2009, the instant application for patent term adjustment was timely filed pursuant to 37 CFR 1.705(d).

On March 24, 2009, the application matured into U.S. Patent No. 7,507,724, with a revised patent term adjustment of 0 days.¹

Patentee previously asserted that, pursuant to Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008), a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." Patentee maintains that the total non-overlapping PTO delay under §154(b)(1)(A) & (B) is 558 (92 + 466) days as these periods do not occur on the same day. Further, given the applicant delay of 454 days, patentee asserts entitlement to 104 (558 - 454) days of patent term adjustment.

OPINION

Preliminarily, it is noted that patentee asserts that the period of Office delay under 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) is the period from the date "three years from the date on which the national stage commenced under 35 U.S.C. 371(b)" The subject application for patent was not filed under 35 U.S.C. 371(b), but under 35 U.S.C. 111(a). As such, the period of Office delay under 35 U.S.C. 154(b)(1)(B) and 37 CFR 1.702(b) is calculated from the date the application was filed until the filing of an RCE. Further, patentee notes that a request for continued examination was filed on October 26, 2007. However, an RCE was previously filed on December 12, 2005. As a request for continued examination was first filed on December 12, 2005, the period for accruing patent term adjustment under 37 CFR 1.702(b) ended as of the date of the filing of the earliest request for continued examination, or December 12, 2005. As the RCE filed on December 12, 2005 was filed prior to the date that was three (3) years from the filing date of the application, July 16, 2006, the application was not pending at least three years from the application filing date until the date of the filing of a request for continued examination. Accordingly, the period of Office delay under 37 CFR 1.702(b) is 0 days.

¹In the decision mailed on February 2, 2009, it was determined that 92 days of Office delay was reduced by 454 days of applicant delay for a patent term adjustment of 0 days.

CONCLUSION

In view thereof, the Office affirms that the revised determination of patent term adjustment at the time of the issuance of the patent is 0 days.

The Office acknowledges the previous submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Senior Petitions Attorney Douglas I. Wood, at (571) 272-3231.

Alexa Brown P/

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